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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,175	06/13/2001	Allison London Brown	PPC-794	5818
27777	7590	04/19/2004	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			ANDERSON, CATHARINE L	
			ART UNIT	PAPER NUMBER
			3761	11

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/880,175

Applicant(s)

LONDON BROWN, ALLISON

Examiner

C. Lynne Anderson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3 March 2004 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Welch et al. (6,286,145).

Welch discloses an absorbent article comprising an absorbent core 14 and a breathable film backsheet 16, as shown in figure 1. The backsheet 16 has a MVTR of about 6,000 to about 7,000 g/m²/24 hours, as disclosed in column 10, lines 32-33. The backsheet 16 has a basis weight of less than about 32 g/m², as disclosed in column 11, lines 29-30.

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With respect to claims 2 and 3, the backsheet 16 has a MVTR of about 6,000 g/m²/24 hours, as disclosed in column 10, lines 32-33.

With respect to claims 4 and 5, the backsheet 16 has a basis weight of about 30 g/m², as disclosed in column 11, lines 29-30.

With respect to claims 6-8, the article further comprises a cover 12 and transfer layer 16A, as shown in figure 3.

With respect to claim 9, since no structure is associated with the claimed release paper, it is the examiner's position that layer 12 may function as a release paper.

With respect to claim 10, the article is a surgical dressing, as disclosed in column 1, lines 14-16.

With respect to claim 11, the article inherently has a color, and since all colors are disclosed in the instant claim by the limitation "and mixtures thereof," the article fulfills the limitations of the claim.

With respect to claim 12, the backsheet 16 has a MVTR of about 6,000 g/m²/24 hours and a basis weight of about 30 g/m².

With respect to claims 13-15, the article further comprises a cover 12 and transfer layer 16A, as shown in figure 3.

With respect to claim 16, since no structure is associated with the claimed release paper, it is the examiner's position that layer 12 may function as a release paper.

With respect to claim 17, the article is a surgical dressing, as disclosed in column 1, lines 14-16.

With respect to claim 18, the article inherently has a color, and since all colors are disclosed in the instant claim by the limitation "and mixtures thereof," the article fulfills the limitations of the claim.

Response to Arguments

Applicant's arguments filed 22 January 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that Welchel discloses a barrier fabric and not an absorbent article, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Welchel discloses a nonwoven web 12 that is capable of absorbing liquid, and may therefore function as an absorbent core. The barrier layer 16 provides a backing to the nonwoven web 12, and therefore functions as a backsheet. The locations of the cover and transfer layer disclosed in instant claims 6-8 are not disclosed with respect to the absorbent core and backsheet, and therefore nonwoven layer 12 and layer 16A are fully capable of acting as the cover and transfer layer, respectively. Welchel therefore discloses all aspects of the claimed invention

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CLA

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April 18, 2004


JOHN S. CALVERT
SUPERVISORY PATENT EXAMINER
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